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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 19 1977

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

Subject: Proposed Real Property Assignment Circular

Attached for your review and comment is a proposed Office of Management and Budget Circular containing policies for controlling the assignment of Federal real property to non-Federal activities.

Policies contained in the proposed circular provide guidance for assigning Federal real property to the following categories of non-Federal users:

1. Activities that provide services to Federal employees such as cafeterias, employee recreation associations, credit unions, blind stands, and child day care centers.
2. General commercial organizations, e.g., banks, retail stores, and Government contractors.
3. Service and non-profit organizations, e.g., veterans service organizations, State and local governments and national voluntary action programs.

The practices followed by agencies in assigning Federal real property (generally office space) to the above users vary greatly. Some agencies require non-Federal occupants to pay rent while other agencies provide free space. In some instances agencies subsidize day care centers, shopping and other services for their employees while neighboring agencies refrain from such activities. In essence, each agency is making its own policy, and serious conflicts and inconsistencies have developed.

The proposed circular will standardize non-Federal space assignment practices among all agencies. The circular basically requires non-Federal activities that are not exempt by specific statute, to pay equivalent commercial rents for the use of Federal space. Exceptions to the paying policy are permitted only under specific circumstances. Such exceptions have been kept to a minimum in line with the President's goal to balance the budget and improve the efficiency and effectiveness of Government administration.

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Your cooperation in providing any comments you have on the
proposed Circular by February 20, 1978 will be appreciated.
Questions regarding the Circular may be directed to
Mr. Charles W. Clark, Office of Federal Procurement Policy,
Office of Management and Budget at 395-6194.

James T. McIntyre Jr.
James T. McIntyre
Acting Director

Attachment

CIRCULAR NO. A -

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

Subject: Assignment of Federally-Controlled Real Property
to Non-Federal Activities

1. Purpose. This circular establishes executive branch policy pertaining to the use of federally-controlled real property and related services by non-Federal activities.

2. Background. Many non-Federal activities occupy federally-controlled real property. The basic conditions governing the use of federally-controlled real property by a non-Federal activity frequently vary from agency to agency. This circular is intended to bring about greater consistency in the practices of different agencies relative to the assignment of federally-controlled real property to non-Federal activities. The circular is also intended to provide policy guidelines for assessing charges for real property and related services furnished by the Government to non-Federal activities.

3. Applicability and scope. The provisions of the circular apply to all executive departments and independent establishments in the executive branch. The circular does not apply to: (a) the Government of the District of Columbia; (b) non-appropriated fund instrumentalities of the uniformed services; (c) the Veterans' Canteen Service, Veterans Administration; or (d) other

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non-appropriated fund activities for which there is specific
statutory authority for the matters covered by the circular.

4. Definitions.

a. Non-Federal activity. Any individual, group, organization or association that is organized, operated or controlled by a private individual(s) or an individual(s) acting outside his official capacity as an officer, employee or agent of the executive branch of the Federal Government.

b. Assignment of real property. The granting to a non-Federal activity of the right to use real property and related services controlled by a Federal agency. This does not include the interim outleasing of excess real property being held by an agency pending transfer or disposition pursuant to 41 CFR Part 101-47.

c. Federally-controlled real property. Land or buildings, including space within buildings and related services owned, leased or provided by the Government. Related services include but are not limited to heat, light, air conditioning, janitorial, telephone, security services, alterations and power.

d. Temporary use. Temporary use of Federal real property means use of the property for a period of 48 hours or less by a non-Federal activity during business or off-duty hours

either on a one time or intermittent basis.

e. Community service organization. Any non-profit group, organization or association that is organized and operated to serve the interest of the local community of which the Federal agency is a part. Examples of community service organizations include civic organizations, parent-teacher organizations, 4-H clubs, scouting organizations, and community fund activities.

5. Policy.

a. Assignment of federally-controlled real property to non-Federal activities. Federally-controlled real property that is not in use for authorized Federal programs and which cannot be disposed of in accordance with 41 CFR Part 101-47 may be assigned to a non-Federal activity. Agencies making assignments of real property to non-Federal activities shall ensure that the assignments are not adverse to their mission and are consistent with the public interest. Assignments authorized by law shall be made pursuant to the applicable statutes. Where real property is assigned to non-Federal activities in the absence of particular statutory authority, the agency official making the assignment shall prepare a written statement setting forth all factors pertaining to the assignment. Such written determination shall be retained for appropriate review in agency files and shall include the basis for making the assignment and the terms and conditions governing the use of the property.

b. Charges for use of federally-controlled real property. Consistent with the policies contained in Office of Management and Budget Circular A-25, non-Federal activities assigned federally-controlled real property shall be charged for such use of real property. Charges for real property controlled by the General Services Administration (GSA) shall be based on the standard level users charges developed by GSA pursuant to P.L. 92-313, Public Buildings Amendments of 1972 (see Federal Property Management Regulations Subpart 101-21.2). Charges for real property for which standard level user charges have not been established and for real property controlled by agencies other than GSA shall be based on equivalent commercial rents for comparable property and services. Agencies not having "in-house" capability for determining rental values may request advice from the GSA Appraisal Staff by telephoning 202-566-0711.

c. Deposit of revenue. Unless otherwise provided by law, revenues collected from non-Federal activities for the use of federally-controlled real property shall be deposited in miscellaneous receipts in the Treasury.

6. Employee service activities. Policies applicable to non-Federal activities that have as their primary purpose the rendering of goods or services to Federal employees are

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provided below.

a. Employee welfare and recreation associations. Federal agencies, as a rule, do not establish or administer welfare and recreational programs for their employees. However, they often lend encouragement to the voluntary efforts of employees who form associations for recreational and welfare purposes. This encouragement frequently takes the form of assigning Federal real property to the associations either on a temporary or long-term basis. Determinations regarding assignments to employee associations shall be made on a case-by-case basis by appropriate agency officials. In making determinations regarding the use of real property by employee associations, agencies shall consider: (1) the availability of the real property and the need to minimize non-essential assignments; (2) the purpose for which the employees association will use the property; and (3) the consistency of the association's mission with the mission of the agency and the association's overall contribution to the welfare and morale of the agency's work force.

(1) Charges. Charges for the use of real property assigned to employee associations shall be assessed in accordance with paragraph 5b. However, such charges may be waived or reduced where an association's use of real property does not interfere with the Government's use and does not result in the Government incurring additional expenses.

(2) Agency overview responsibilities. Agencies are

responsible for assuring that welfare and recreation activities utilizing Federal real property comply with non-discrimination, conflict of interest, equal employment opportunity and other appropriate standards and criteria prescribed by the Civil Service Commission or other agencies. Agencies shall not assign space to, or allow continued occupancy of space by, activities that violate specified standards or criteria.

b. Credit unions. The Federal Credit Union Act (12 U.S.C. 1770) provides that duly organized and constituted credit unions may occupy federally-controlled space if such space is available in the community or district where the credit union does business. The act states that an agency may in "its discretion allot space to such credit union if space is available, without charge for rent or services."

c. Blind vending facilities. The Randolph-Sheppard Act, as amended, 20 U.S.C. 107 et. seq., provides that, whenever feasible, one or more vending facilities are to be established on Federal real property to the extent that such facilities will not adversely affect the interests of the United States. Under the provisions of the Randolph-Sheppard Act, blind persons licensed by state agencies are to be given priority in the operation of vending facilities on Federal real property. Vending facilities are defined in the Act to include automatic vending machines, cafeterias, snack bars, cart service, shelters and counters. Blind

vendors shall not be charged for Government space. Utilities and other services may be provided by the assigning agency without charge.

d. Concessions. Federally-controlled real property may be assigned on a concession basis to commercial activities that provide services to Federal employees. Prior to making such assignments the agency controlling the real property must determine that the service to be provided by the concession is required to maintain the welfare and morale of employees and that adequate alternative facilities offering the same or similar services are not reasonably accessible to the employees. Concessionaires shall be required to pay equivalent commercial rents for the use of federally-controlled real property. Concessions as referenced in this circular are limited to activities providing services primarily to Federal employees convenient to the work site; this does not include concessions in national parks or other high visitor facilities that provide services primarily for the public.

e. Labor organizations. Section 23, Executive Order 11491, as amended, Labor Management Relations in the Federal Service, provides that each agency shall issue appropriate policies with respect to the use of agency facilities by labor organizations. Accordingly, determinations as to occupancy or use of federally-controlled real property by labor organizations and the terms and conditions relative thereto are governed by agency policies and are not subject

to the provisions of this circular.

f. Day care centers. Day care centers for children of Federal employees shall not be established in Federal space except where the agency head has determined that the facilities are essential to the efficient operation of the agency. Where such determinations are made, the fees charged to parents for using the centers shall be sufficient to recapture the Government's full cost of providing the services. Costs to be recovered by agencies providing day care services include but are not limited to the value of the space as determined in accordance with paragraph 5b above, and all amounts expended for space alterations and renovations, equipment, furniture, supplies, utilities, maintenance and custodial services, and staffing.

7. General Commercial Organizations. In addition to organizations that provide services primarily to Federal employees, it is sometimes necessary and advantageous for an agency to assign real property to commercial firms or other organizations that provide services to the general public, specific sectors thereof, or to other Government agencies.

a. Charges. When real property is assigned to commercial organizations, the organizations shall be required to pay for the property as provided for in paragraph 5b.

b. Government contractors. Agencies having appropriate legal authority may permit persons or firms under contract to the Government to occupy federally-controlled real property.

The real property may be occupied without the payment of rent provided the terms and conditions of the occupancy are specified in the contract and provided further that the requirement for the payment of rent would result in an equivalent add-on to the Government's price for the contract.

8. Specific organizations.

a. Veterans' service organizations. Pursuant to 38 U.S.C. 3402 the Administrator of Veterans Affairs may, in his discretion, furnish, if available, space and office facilities for the use of the American Red Cross and paid full time representatives of veterans' service organizations recognized by the Veterans Administration pursuant to its governing laws and regulations. Space provided to veteran service organizations will be without charge.

b. State and local governments. Federally-controlled real property that is not required for Federal programs and which cannot be disposed of, may be assigned to units of State or local governments. Such assignments shall be made at the discretion of the controlling agency and shall require the payment of fair charges. In determining the amount State and local governments shall be charged for the use of Federal real property, the controlling Federal agency shall take into consideration any benefits which may accrue to the United States from such occupancy and appropriate adjustments may be made particularly where reciprocal agreements provide for Federal occupancy of State or local real property.

c. National voluntary action programs. Consistent with Executive Order 11603 real property may be used by volunteer organizations for meetings, training programs and similar purposes, when it will not interfere with the Government's intended use of the facilities. National voluntary action programs will not be required to pay equivalent commercial rents; however, all costs, specifically incurred by the Government as a result of the organizations' use of the space shall be recovered.

9. Temporary use by a non-Federal activity. Upon approval of the controlling agency, Federal real property such as conference rooms, hearing rooms, training rooms, auditoriums and cafeterias may be used by employee groups, community service organizations, or similar type activities for meetings or other purposes on a temporary basis. Generally, such use shall not be scheduled beyond normal building operating hours nor for Saturdays, Sundays, holidays or other times when the facility is normally closed, without appropriate reimbursement for services. Activities using Federal real property on a temporary basis shall pay the Government for extra costs incurred by the Government, (utilities, maintenance, protection, and other provided services) as a result of the activities' use of the property.

10. Easements and other outgrants. Agencies having appropriate legal authority may convey easements and other interests in

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real property under their control to non-Federal activities for rights-of-way and similar uses. Such conveyances should be made only if they are in the public interest and are not adverse to agencies' missions. Rights-of-way and similar conveyances should normally not be made at less than the appraised fair market value of the conveyed interest.

11. Responsibilities.

a. Agencies. The Administrator of General Services will promulgate such regulations as are necessary for implementing the circular in real property controlled by the General Services Administration (GSA). Agencies, other than GSA, will promulgate regulations for implementing the circular in real property under their control. Any requests for exceptions to the circular should be forwarded to the Administrator of General Services for activities occupying GSA controlled property and to the Director, Office of Management and Budget for all other activities.

b. Existing contracts. Contracts existing as of the date of this circular which provide for the assignment of federally-controlled real property or the providing of related services to non-Federal activities shall be amended to the extent feasible to comply with the policies contained herein. Contracts entered into, renewed or extended after the date of the circular shall incorporate the prescribed policies.

12. Inquiries. Inquiries regarding the provisions of this circular should be directed to the Office of Management and Budget, telephone 395-6194 (code 103).

Director